

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION
Civil Action No. 1:11-cv-0129

JIHUI ZHANG,

Plaintiff,

v.

FEDERATION OF STATE MEDICAL
BOARDS, NATIONAL BOARD OF
MEDICAL EXAMINERS, and
PROMETRIC,

Defendants.

**DEFENDANT FEDERATION OF
STATE MEDICAL BOARDS' AND
NATIONAL BOARD OF MEDICAL
EXAMINERS' MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM
UPON WHICH RELIEF CAN BE
GRANTED**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure Defendants Federation of State Medical Boards (“FSMB”) and National Board of Medical Examiners (“NBME”) respectfully request that the Court dismiss this action as to defendants FSMB and NBME on the grounds that Plaintiff’s *pro se* Complaint fails to state a claim or claims upon which relief can be granted.

In support of this Motion, defendants FSMB and NBME show unto the Court the following:

1. Plaintiff filed this *pro se* action apparently alleging that the reasons he failed Step 3 of the United States Medical Licensing Examination (“USMLE”) were not properly investigated in that he did not receive a manual recheck of his score and that his test was improperly administered. Plaintiff apparently seeks declaratory relief in the form of requiring “a fair and subjective investigation into

[his] USMLE Step 3 score” and monetary damages in the amount of \$195,000.

2. To the extent Plaintiff is bringing a claim against defendants FSMB and NBME for violation of his civil rights pursuant to 42 U.S.C. § 1983, that claim fails because FSMB and NBME are not state actors and were not acting under color of state law.

3. Plaintiff also has failed to specify what, if any, right afforded to him by Federal Law or the United States Constitution was violated by the alleged actions of defendants FSMB and NBME.

4. Plaintiff’s allegations otherwise fail to state a plausible claim for relief under 42 U.S.C. § 1983 or any other cause of action such as negligence or breach of contract. To the contrary, the materials attached to the Complaint affirmatively show that defendants FSMB and NBME are not liable to Plaintiff under any theory of relief and that defendants FSMB’s and NBME’s efforts to verify Plaintiff’s test score were supererogatory.

5. In further support of the motion, defendants FSMB and NBME submit the accompanying Brief in Support of Motion to Dismiss pursuant to Local Rule 7.3(a) of the United States District Court for the Middle District of North Carolina.

WHEREFORE, defendants FSMB and NBME respectfully request that their Motion to Dismiss for Failure to State A Claim Upon Which Relief Can Be Granted be allowed and that Plaintiff’s complaint against Federation of State Medical Boards and National Board of Medical Examiners be dismissed.

This the 18th day of April, 2011.

/s/Jon Berkelhammer

Jon Berkelhammer

N.C. Bar No. 10246

Patrick M. Kane

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*Attorneys for Defendants Federation of
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of Medical Examiners*

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and I hereby certify that I have mailed the document to the following non CM/ECF participant:

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/s/Jon Berkelhammer
Jon Berkelhammer

*Attorney for Defendants Federation of State
Medical Boards and National Board of
Medical Examiners*